

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ERIC MARTIN #165780,

Plaintiff,

v.

Case No. 2:08-cv-227
HON. R. ALLAN EDGAR

DAVID KLEINHARDT, et. al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff Eric Martin, a Michigan state prisoner in the custody of the Michigan Department of Corrections, brings this *pro se* civil rights action under 42 U.S.C. § 1983. On October 8, 2008, Magistrate Judge Timothy P. Greeley submitted his report and recommendation [Doc. No. 4] pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(c). It is recommended that the plaintiff's complaint be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) and 42 U.S.C. § 1997e(c) for failure to state a claim upon which relief may be granted. Plaintiff Martin has not timely filed an objection to the report and recommendation.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and W.D. Mich. LCivR 72.3(b). Accordingly, plaintiff Martin's complaint shall be **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) and 42 U.S.C. § 1997e(c) on the ground

that it fails to state a claim upon which relief may be granted. The plaintiff's motion for a temporary restraining order [Doc. No. 3] is **DENIED**.

The dismissal of this frivolous action shall count as a strike for purposes of enforcing the three-strikes rule provided in 28 U.S.C. § 1915(g). For the same reasons that the Court dismisses this action as set forth in the report and recommendation, the Court will certify that there is no good faith basis for plaintiff Martin to take an appeal from this decision. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(4)(B); *McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

A separate judgment will enter.

SO ORDERED.

Date: February 26, 2009.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE